2003

Barbara Shwarz v. State of Utah, State Records Committee, Executive Secretary Eric A. Stene; Department of Human Services, Executive Director Robin Arnold-Williams; and Valley Mental Health, Executive Director David E. Dangerfield : Brief of Appellee

Utah Court of Appeals

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Barbara L. Shwarz; Appellant Pro Se.

IN THE UTAH COURT OF APPEALS

BARBARA SCHWARZ, Plaintiff/Appellant, vs. STATE OF UTAH, STATE RECORDS COMMITTEE, EXECUTIVE SECRETARY ERIC A. STENE; DEPARTMENT OF HUMAN SERVICES, EXECUTIVE DIRECTOR ROBIN ARNOLD-WILLIAMS; AND VALLEY MENTAL HEALTH, EXECUTIVE DIRECTOR DAVID E. DANGERFIELD, Defendants/Appellees.	**APPELLEES' BRIEF** Case No. 20030875

APPEAL FROM A FINAL JUDGMENT
OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
THE HONORABLE JOSEPH C. FRATTO

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED BY APPELLEES

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COMPLETE LIST OF ALL PARTIES IN THE DISTRICT COURT

The parties are accurately and completely identified in the caption.

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(3)(j) (2002). By order dated December 4, 2003, the Utah Supreme Court transferred this case to the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2-2(4) (2002).

ISSUES PRESENTED FOR REVIEW

1. Should this Court consider issues that Schwarz failed to preserve in the court below or properly brief on appeal?

Standard of Review: Arguments not raised in the court below are waived. State v. Hardy, 2002 UT App 244, ¶13, 54 P.3d 645. If an appellant fails to adequately brief the issues, the appellate court may decline to consider the argument. Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634, at *2 (Utah Ct. App. Nov. 28, 2003) (unpublished opinion, attached hereto as Addendum A).

2. Did the trial court correctly determine that Schwarz failed to state a claim against the State of Utah, its agencies and its staff? (R. 80-81, 127-130).

Schwarz incorrectly states that this is an appeal from a order granting summary judgment. This is an appeal from the trial court's order granting Defendants' Motions to Dismiss.

Standard of Review: The grant of a motion to dismiss is a question of law that the appellate court reviews for correctness, "consider[ing] only the legal sufficiency of the complaint" and giving no deference to the decision of the trial court. Utah Safe to Learn-Safe to Worship Coalition, Inc. v. State, 2004 UT 32, ¶11; State v. Hamilton, 2003 UT 22, ¶17, 70 P.3d 111; Flake v. Flake, 2003 UT 17, ¶8, 71 P.3d 589.

3. Did the trial court correctly determine that Schwarz's claim against the State

and its agencies is barred by collateral estoppel? (R. 80-81, 127-130).

Standard of Review: The grant of a motion to dismiss is a question of law that the appellate court reviews for correctness, "consider[ing] only the legal sufficiency of the complaint" and giving no deference to the decision of the trial court. Utah Safe to Learn-Safe to Worship Coalition, Inc. v. State, 2004 UT 32, ¶11; State v. Hamilton, 2003 UT 22, ¶17, 70 P.3d 111; Flake v. Flake, 2003 UT 17, ¶8, 71 P.3d 589.

DETERMINATIVE LEGAL PROVISIONS

The full text of the following determinative statutes pertinent to the issues before the Court is attached as Addendum B:

Utah Code Ann. § 63-2-403 (Supp. 2003)

Utah Code Ann. § 63-2-404 (1997)

STATEMENT OF THE CASE

This case involves a dispute over access to government records. (R.90). Plaintiff, Barbara Schwarz ("Schwarz"), filed this lawsuit after the Department of Human Services ("the Department") denied her access to records and the State Records Committee ("the Committee") initially denied her an administrative appeal. Id. The Committee subsequently gave her a hearing, which resulted in a separate appeal to the Third District Court concerning the same subject matter. Id.; see Third District Court Case #010907201. Judge Frederick granted a dispositive motion in that case. (R. 90). Schwarz's subsequent appeal resulted in a Memorandum Decision from this Court. See

Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634 (Utah Ct. App. Nov. 28, 2003). The facts leading to both lawsuits are detailed below.

STATEMENT OF RELEVANT FACTS

On March 9, 2001, Schwarz sent a letter to the State of Utah, Division of Mental Health ("the Division"), requesting that they provide her "with a copy of your correspondence, the letters, cards, e-mail, memoranda, notes, etc. that you received and generated in regards of me." (R. 90). Schwarz then sent a second letter to the Division requesting that they provide her with "all your records on me." Id.

The Division's attorney, Dawn M. Hibl, responded to Schwarz's letters and denied her requests, asserting that she was not entitled to the name of the referent which the Division regarded as confidential. The Division provided Schwarz with the email that had been received from the referent with the name of the author redacted. The title, employer and phone number of the author were not redacted. (R. 90-91).

Schwarz appealed the Division's decision to the Executive Director of the Department of Human Services. The Executive Director of the Department affirmed the denial. Schwarz appealed the Executive Director's decision to the State Records Committee pursuant to Utah Code Ann. § 63-2-402 (1997) and § 63-2-403 (Supp. 2003). (R. 91).

Division of State Archives employee Richard Francom, acting on behalf of the Executive Secretary for the Committee, initially denied Schwarz's request for a hearing. Francom wrote: "From the information you have given it appears that the Department of Human Services has fulfilled your request and provided you with a copy of all the records

they have relating to you," adding that "[t]he State Records Committee has no jurisdiction over the Legal Services Corporation . . . ." Id.

Acting on the advice of counsel, the Committee reversed Mr. Francom's administrative decision to deny Schwarz an appeal hearing but, before the hearing could be held, Schwarz sued the Committee and the other defendants named in this lawsuit. Among other things, Schwarz claimed she was entitled to know the name of the referent. The Committee subsequently held a hearing July 11, 2001 pursuant to Utah Code Ann. § 63-2-403, which resulted in a written Decision and Order. The Committee found that the Division had properly classified the identity of the referent as a private or controlled record. (R. 91-92).

Relying on Utah Code § 63-2-403(11)(b), the Committee ordered disclosure notwithstanding the classification. This statute provides that "the records committee may, upon consideration and weighting of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access." Utah Code Ann. § 63-2-403(11)(b) (Supp. 2003). (R. 92).

The July 16, 2001, Decision and Order specifically ordered the Division to allow Schwarz access to the referent's name on the basis that the "public interest is served by allowing Ms. Schwarz to identify the person who has provided information about her to the government." Among other things, the Committee felt this would be necessary for

Schwarz to correct any misinformation given to the government by the referent. Id.

The Division appealed the decision to the District Court pursuant to Utah Code Ann. § 63-2-404. The Committee and the Division filed cross motions for a judgment on the pleadings. Judge Frederick granted the Division's Motion and denied the Committee's motion. (R. 92-93).

On March 30, 2003, Schwarz filed a Notice of Appeal. On November 28, 2003, this Court issued a Memorandum Decision affirming the district court's judgment. Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634 (Utah Ct. App. Nov. 28, 2003). The present case was essentially inactive while the parties litigated the related matter.[1] This appeal arises from the District Court's decision to grant Defendants' Motions to Dismiss, which were based on mootness, collateral estoppel and the issue preclusion doctrine. (R. 127-130).

SUMMARY OF THE ARGUMENT

This Court should not consider the issues raised in Schwarz's brief. Not only does her brief fail to comply with Rule 24 of the Utah Rules of Appellate Procedure, she fails to properly brief and analyze the issues.

The trial court correctly determined that Schwarz failed to state a claim upon which relief can be granted. Her claims against the State Records Committee and its staff

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[1]As previously indicated, this lawsuit arose from the initial decision to deny Schwarz an administrative appeal. The Committee reversed that determination and gave Schwarz the administrative appeal she requested.

are moot because Schwarz received a hearing before the Committee.

Schwarz's claims are also barred by collateral estoppel. The central issue in this case - whether Schwarz is entitled to the name of the author of an e-mail received by the Division of Mental Health - is identical to the substantive issue recently litigated in Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634 (Utah Ct. App. Nov. 28, 2003). Therefore, the trial court was correct in granting Defendants' Motions to Dismiss, which argued that principles of mootness and collateral estoppel bar the present action.

ARGUMENT

I. THE COURT SHOULD NOT ADDRESS THE ARGUMENTS MADE IN SCHWARZ'S INADEQUATE BRIEF

The Utah Supreme Court has held that appealing parties must "clearly define[ ] the issues presented on appeal with pertinent authority cited." Water & Energy Systems Technology, Inc. v. Keil, 2002 UT 32, n.2, 48 P.3d 888 (internal quotations omitted). "A reviewing court should not address arguments that are not adequately briefed." Id. Generally, "[a]n issue is inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." Smith v. Smith, 1999 UT App 370, ¶8, 995 P.2d 14.

As this court recently recognized in Schwarz's related case, "briefs must include citations to the relevant portions of the record, demonstrate that the issues on appeal were preserved, marshal the evidence supporting any disputed factual finding, and cite and

analyze relevant law." Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634 (Utah Ct. App. Nov. 28, 2003). Schwarz not only inadequately briefs the issues she raises, she fails to analyze the only issue properly before the Court – are the claims alleged in her complaint barred by the doctrines of mootness and collateral estoppel?

In brief response to the issues Schwarz does raise, Appellees assert that the Order granting Appellees/Defendants' Motions to Dismiss conforms with applicable court rules concerning orders. More precisely, the Order in this case states that it was entered upon Defendants' motions to dismiss. See Utah R. Civ. P. 7(f). The Order was entered after Judge Fratto redacted Defendants' proposed Finding of Fact and Conclusions of Law, because the Order was based on insufficiency of Schwarz's Complaint for Injunctive Relief and Supplemental Complaint. See Utah R. Civ. P. 5; R. 1-8, 41-45, 119, 127-131; see also Utah R. Civ. P. 52 ("The trial court need not enter findings of fact and conclusions of law in rulings on motions . . . . The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b) . . . . when the motion is based on more than one ground."). In the present case, the court found no cause of action. (R. 119 (Hearing Minutes at 10:56 - "The court states findings and grants the motion to dismiss finding no cause of action.")).

Schwarz vaguely complains about the fact that three judges allegedly "recused" themselves from participating in this case. Although the record is somewhat unclear on this issue, it appears the case was initially assigned to Judge Young in May 2001. Judge

Lubeck was assigned the case in June 2001. It was then reassigned to Judge Burton in August 2001. No dispositive motions were filed by the parties until Judge Fratto took over the case in September 2002.

The Utah Supreme Court has recognized that the Rules of Judicial Administration grant discretion to the presiding judge to assign cases. Utah Code Jud. Admin. Rule 3-104(3)(E); High Country Estates Homeowners Assn. v. Bagley & Co., 2000 UT 27, ¶ 11; 996 P.2d 534; see also Utah Code Ann. § 78-3-29(5)(b) (2002). In High Country Estates, the court held that "rule 3-104 grants authority to the presiding judge to make initial case assignments and to reassign cases when necessary. Rule 3-108, for instance, enumerates several justifications for reassignment within the particular context of judicial assistance." High Country Estates Homeowners Assn., 2000 UT 27, ¶ 14; 996 P.2d 534. In short, "presiding judges have broad discretion in reassigning cases." Id.; see also Utah R. Civ. P. 63(a).

Appellees recognize that unless a justification for reassignment exists, a judge has a duty to retain a case until it is completed. The justification for reassignment in this case is not clear from the record. It is worth noting, however, that besides the filing of the Answer to the Complaint, no significant proceedings had taken place prior to Judge Fratto's assignment. Furthermore, no dispositive motions were pending.[2] In light of

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[2]Schwarz did file several documents, titled as motions, notices and/or affidavits, to inform the court of the status of the related case before the State Records Committee and to protest various matters regarding the logging of her filings in the court docket. The first substantive motions filed by either party were Defendants' Motions to Dismiss,

these facts, it cannot seriously be argued that the reassignment of the case to Judge Fratto had any impact on Schwarz's procedural or substantive rights.[3]

Granted, a "lay person acting as . . . her own attorney 'should be accorded every consideration that may be reasonably indulged.'" Wurst v. Department of Employment Sec., 818 P.2d 1036, 1039 n.3 (Utah App. 1991). Courts, however, have generally allowed improper filings only when necessary "in the interests of justice to protect a valuable constitutional right." State v. Cook, 714 P.2d 296, 297 (Utah 1986).

Schwarz's constitutional rights are not at issue in this case. She sought access to government records classified as private, exercised her appeal rights when she was denied access to a portion of one record and had a full and fair opportunity to litigate her claim. As in the other appeal, Schwarz's brief in the present case fails to address the only issue before the Court. Given that Schwarz's brief is so lacking in its analysis and identification of the proper issues as to shift the burden of research and argument to the Court, it should refrain from addressing the arguments in her brief. Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634, at *2 (Utah Ct. App. Nov. 28,

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which the State defendants filed with Judge Fratto on June 17, 2003.

[3] Schwarz also claims she was denied her right to a jury trial. Utah Code Ann. § 63-2-404(7)(b) states that the court shall review orders of the State Records Committee de novo, without a jury. Finally, Schwarz alleges that Judge Fratto had ex parte communication with the defendants. No such communication took place. Schwarz's false allegation appears to be based on the court clerk's notes regarding the availability of the parties to appear at a hearing on one of several alternative dates. A copy of those notes is attached hereto as Addendum C. There is no evidence that any of the defendants had ex parte communication with Judge Fratto concerning this case.

2003) ("If an appellant fails to adequately brief the issues, the appellate court may decline to consider the argument."); see also Utah R. App. P. 24(j) ("[a]ll briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant, immaterial, or scandalous matters."). Schwarz's brief does not comply with this rule and should accordingly be disregarded. See Utah R. App. P. 24(j).

II. THE TRIAL COURT CORRECTLY DETERMINED THAT SCHWARZ HAS FAILED TO STATE A CLAIM AGAINST THE STATE OF UTAH, THE RECORDS COMMITTEE OR ITS STAFF

The trial court correctly determined that the Complaint fails to set forth a factual basis for claims alleged against the State, the Committee, or its staff. Paragraphs 43 and 44 of the Complaint allege that the Committee "did not grant [Schwarz] any hearing" or "advise [her] on any further appeal rights." (R. 7). While it is true that Schwarz initially did not get an appeal hearing before the Committee, that determination was subsequently reversed on an administrative level. Schwarz received a hearing before the Committee. There is no dispute that the hearing resulted in a written Decision and Order. Schwarz participated in the subsequent district court appeal of that Decision and Order, which the Division filed against the Committee. Consequently, any claims Schwarz may have had against the Committee and its staff for not granting her a hearing were rendered moot and should not be addressed by this court. See Jensen v. IHC Hospitals, 2003 UT 51, ¶132, 82 P.3d 1076 (appellate court will not adjudicate issues when the requested judicial relief cannot affect the rights of the litigants).

III. THE TRIAL COURT CORRECTLY DETERMINED THAT SCHWARZ'S CLAIM AGAINST THE STATE AND ITS AGENCIES IS BARRED BY COLLATERAL ESTOPPEL

It is well settled that the doctrine of "issue preclusion prevents the relitigation of issues in a subsequent action." Culbertson v. Board of County Comm'rs, 2001 UT 108, ¶25, 44 P.3d 642.[4] Schwarz's claims against the State of Utah and its agencies arise out of the same government records request that was the subject of the recent lawsuit before Judge Frederick. That case was resolved on dispositive cross-motions. The prior action was dismissed because the court found that the Division's classification of the requested records was proper. Schwarz appealed. That appeal was dismissed due to Schwarz's failure to adequately brief the issue before the court. See Department of Hum. Servs. v. Schwarz, 2003 UT App 406, 2003 WL 22827634, at *2 (Utah Ct. App. Nov. 28, 2003).

While the basis for Judge Fratto's decision in the present case does not detail the specific grounds for granting defendants' Motions to Dismiss, it granted the Motions in their entirety. (R. 130). That motion argued that all of the claims addressed in the prior action are barred by issue preclusion.

The four elements of issue preclusion are: (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one

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[4] Issue preclusion, often termed collateral estoppel, is one of two distinct branches of the doctrine of res judicata. The other branch is claim preclusion. See Culbertson v. Board of County Comm'rs, 2001 UT 108, ¶12 n.6, 44 P.3d 642; see also Snyder v. Murray City Corp., 2003 UT 13, ¶33, 73 P.2d 325.

presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits. Snyder v. Murray City Corp., 2003 UT 13, ¶35, 73 P.2d 325; In Re General Determination of Rights to the Use of All Water, Murdock v. Springville Municipal Corp., 1999 UT 39, ¶18, 982 P.2d 65.

The first element is satisfied in this case. The same Barbara Schwarz who is the plaintiff in this matter was allowed to intervene as a defendant before Judge Frederick in Third District Court Case No. 010907201. Schwarz filed pleadings and objections with the court after it granted a stipulation of the parties allowing her to intervene in the lawsuit. (R. 94-95).

The second element, that the issues be identical, is also met. It is not necessary that the legal question be the same in both actions, only that the factual issues be the same. Robertson v. Campbell, 674 P.2d 1226, 1230 (Utah 1983); see also Berry v. Berry, 738 P.2d 246, 248 (Utah App. 1987); Cooper State Thrift and Loan v. Bruno, 735 P.2d 387, 390 (Utah App. 1987). The government records request to the State of Utah, about which Schwarz complained in this action, is the same request that was at issue in the related action. (R. 95).

The third element, full and fair litigation, requires only that "the parties must receive notice, reasonably calculated, under all the circumstances, to appraise them of the pendency of the action and afford them an opportunity to present their objections." Career Serv. Review Bd. v. Utah Dep't of Corrections, 942 P.2d 933, 939 (Utah 1997). The

prior litigation met this requirement. Schwarz participated in that lawsuit and responded to the parties' motions for judgment on the pleadings. Schwarz clearly had notice of the action and had an opportunity to present her arguments and objections to the dispositive motions filed by the Committee (as her co-defendant in that case) and the Division (which appealed the Committee's decision ordering the disclosure of the requested record to Schwarz).

Finally, the prior action ended with a final judgment entered against Schwarz and the Committee, from which she appealed and lost. Judge Frederick expressly held that "the interests favoring access are outweighed by the interests favoring restriction of access to the referent's name. See Utah Code Ann. §63-2-404(8)." Judge Frederick also held that "interests such as guarding against the invasion of personal privacy, protecting the safety of private individuals, and promoting candid referrals for public assistance favor restriction of access to the referent's name."

All four elements of issue preclusion have been met; therefore, Judge Fratto in this case was correct in concluding that Schwarz's present action should be dismissed. The prior decision of Judge Frederick is binding upon Schwarz as to the classification of the requested record. There is no dispute that Schwarz appealed Judge Frederick's decision denying her access to the remainder of the subject e-mail. Having fully and fairly litigated the substantive issue in this case in the prior matter, the plaintiff is bound by collateral estoppel.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's order granting Defendants' Motions to Dismiss.

DATED this 26th day of April, 2004.

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Attorney General

Mark E. Burns

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Appellees' Brief was mailed, postage prepaid, this 26th day of April, 2004, to:

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ADDENDUM A

Westlaw

Not Reported in P 2d
2003 UT App 406
(Cite as: 2003 WL 22827634 (Utah App.))

UNPUBLISHED OPINION CHECK COURT RULES BEFORE CITING

Court of Appeals of Utah

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH, Plaintiff and Appellee,
v
Barbara SCHWARZ and Utah State Records Committee, Defendants and Appellant

No. 20030324-CA.

Nov 28, 2003

Third District, Salt Lake Department, The Honorable J Dennis Frederick

Barbara Schwarz, Salt Lake City, Appellant Pro Se

Mark L Shurtleff and Joel A Ferre, Salt Lake City, for Appellee

Before Judges DAVIS, GREENWOOD, and THORNE

MEMORANDUM DECISION (Not For Official Publication)

PER CURIAM

***1** Barbara Schwarz appeals the district court's ruling that the Department of Human Services, Division of Mental Health (Division) was not required to disclose the name of a person providing a referral to the Division pertaining to Schwarz

Schwarz made a request under the Utah Government Records Access and Management Act (GRAMA), Utah Code Ann §§ 63-2-101 to -909 (1997 & Supp 2003), for all records pertaining to her that were in the possession of the Division The Division provided an electronic mail message that referred Schwarz's name to the Division for mental health services, but it redacted the author's name pursuant to a policy to ensure the anonymity of persons making referrals The Executive Director of the Department of Human Services affirmed the decision On appeal, the Utah State Records Committee (Records Committee) agreed that the Division properly classified the name of a referent as a "private" or "controlled" record, however, it ordered disclosure of the name because "the public interest favoring access outweighs the interest favoring restriction of access" *See* Utah Code Ann § 63-2-403(11)(b) (Supp 2003) (allowing disclosure of records classified as private, protected, or controlled if Records Committee determines "public interests favoring access outweighs the interest favoring restriction of access") The Division petitioned for judicial review in district court *See* Utah Code Ann § 63-46b-15 (1997) (allowing district court de novo review of final agency actions resulting from informal adjudicative proceedings)

Utah Code Ann § 63-2-404(8)(a) (1997) states that "[t]he court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access" The district court vacated the Record Committee's order requiring the Division to disclose the referent's name, after finding that "the interests favoring access are outweighed by the interests favoring restriction of access to the referent's name" The court specifically found "that interests such as guarding against the invasion of personal privacy, protecting the safety of private individuals, and promoting candid referrals for public assistance favor restriction of access to the referent's name"

The issue before this court is whether the district court correctly ruled that the interests favoring access to the referent's name are outweighed by the interests favoring restriction of access The Division contends that because Schwarz has failed to analyze or adequately brief the issue, we should not address her arguments *See Water & Energy Sys Tech Inc v Kell*, 2002 UT 32, ¶ 13 n 2, 48 P 3d 888 We agree Schwarz's briefs fail to properly address or analyze the issue before this court The briefs contain no citations to the record in this case, and no analysis of relevant statutory or case

law.

*2 Although the Division also briefed the merits of the appeal, neither an opposing party, nor the appellate courts, are obligated to address deficiencies in an appellant's briefing. *See* Smith v. Smith, 1999 UT App 370,¶ 8, 995 P.2d 14 ("An issue is inadequately briefed when the overall analysis is so lacking as to shift the burden of research and analysis to the reviewing court."). Accordingly, briefs must include citations to the relevant portions of the record, demonstrate that issues raised on appeal were preserved, marshal the evidence supporting any disputed factual finding, and cite and analyze relevant law. *See* Utah R.App. P. 24(a)(9). If an appellant fails to adequately brief the issues, the appellate court may decline to consider the argument. *See* Phillips v. Hatfield, 904 P.2d 1108, 1110 (Utah Ct.App.1995); Koulis v. Standard Oil Co., 746 P.2d 1182, 1185 (Utah Ct.App.1987). In addition, rule 24(j) of the Utah Rules of Appellate Procedure requires that "[a]ll briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant, immaterial, or scandalous matters." Non-complying briefs can be stricken or disregarded. *See* Utah R.App. P. 24(j). Schwarz's briefs contain material that may be stricken or disregarded by this court.

Schwarz requests this court to consider that she is a pro se litigant without the resources available to the Appellee in this case. However, Schwarz has frequently appeared in the district and appellate courts in this state and may be held to the standard appropriate to her experience. Since 1990, Schwarz has filed no fewer than fifteen pro se appeals in this court or the Utah Supreme Court, as well as three petitions for writ of certiorari. We also note that this appeal results from a civil proceeding initiated by Schwarz. "When an individual avails herself of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate." Lundahl v. Quinn, 2003 UT 11,¶ 4, 67 P.3d 1000. Accordingly, Schwarz may "be charged with full knowledge and understanding of all relevant statutes, rules, and case law." *Id.* at ¶ 5.

Based upon the failure to adequately brief the issue before the court, we decline to address Schwarz's arguments on appeal and affirm the district court's judgment.

2003 WL 22827634 (Utah App.), 2003 UT App 406

END OF DOCUMENT

ADDENDUM B

63-2-403. Appeals to the records committee.

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection **63-2-204**(7);

(b) 45 days after the original request for records if:

(i) the circumstances described in Subsection **63-2-401**(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section **63-2-401**.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the records request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than three business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 45 days after the date the notice of appeal was filed provided, however, the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section **63-2-308** for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by

first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and omment on the issues. The records committee may allow other interested persons to comment on the ssues.

(9) (a) The records committee may review the disputed records. However, if the committee is veighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, he records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections **63-2-304**(1) and (2), and privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection **63-2-201**(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal

the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

(14) (a) Each government entity shall comply with the order of the records committee and, if records are ordered to be produced, file:

(i) a notice of compliance with the records committee upon production of the records; or

(ii) a notice of intent to appeal.

(b) (i) If the government entity fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the entity's noncompliance to the governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for

judicial branch agencies entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Amended by Chapter 245, 1999 General Session
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Last revised: Wednesday, April 21, 2004

63-2-404. Judicial review.

(1) (a) Any party to a proceeding before the records committee may petition for judicial review by he district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection **63-2-402** (1)(b).

(b) The requester shall file a petition no later than:

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection **63-2-401**(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section **63-2-401**.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) The district court may review the disputed records. The review shall be in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled

records, business confidentiality interests in the case of records protected under Subsections **63-2-304**(1) and (2), and privacy interests or the public interest in the case of other protected records.

Amended by Chapter 133, 1995 General Session
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ADDENDUM C

7/18
Please set for
hearing on
defendants'
MOtions to Dismiss
There are two #45 mins

8/21
Please set for
hearing on the
proposed order
and objection to
proposed order
1/2 hr.